

Module 19



Environmental Considerations & NEPA Process

OBJECTIVES:

- ◆ Overview of National environmental statutes and applicable Executive Orders that apply to Civil Works projects.
- ◆ Environmental requirements during the Civil Works project delivery process:

Reconnaissance Phase
Feasibility Phase
PED
Construction
Operations



Pertinent Laws & Directives



- ★ National Environmental Policy Act of 1969
- ★ Clean Water Act of 1977
- ★ National Historic Preservation Acts of 1956 & 1980
- ★ Fish and Wildlife Coordination Act of 1958
- ★ Endangered Species Act of 1973
- ★ Clean Air Acts of 1963 & 1970
- ★ E.O. 12898 - Environmental Justice - 1997

Pertinent Laws & Directives

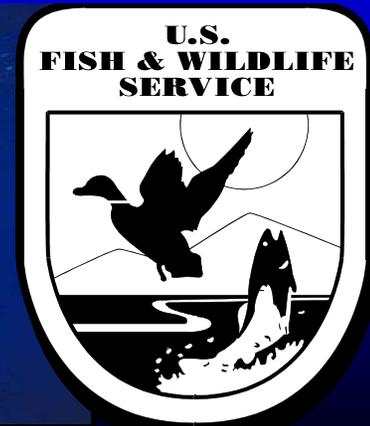


Others:

- ▼ Coastal Zone Management Act of 1972
- ▼ Marine Protection, Research, and Sanctuary Act
- ▼ Executive Order 11990 - Protection of Wetlands - 1977
- ▼ AND over a hundred others!! (You are never out of the woods!)

Fish & Wildlife Coordination Act - 1958:

- ◆ Requires coordination during ALL phases of project delivery with the USFWS, NMFS, and the State fish and wildlife agency.
- ◆ Requires coordination for the purpose of determining the significant resources of the area and to allow agencies to participate in formulation of plans.



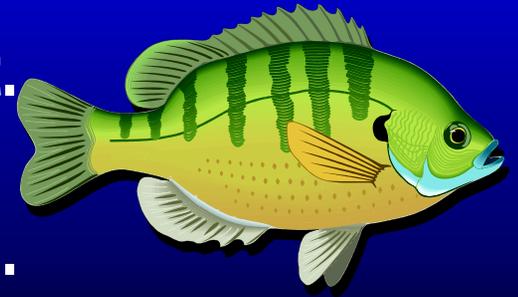
Fish & Wildlife Coordination Act - 1958:

- ◆ Requires full consideration of USFWS views and recommendations.
- ◆ Ensures that fish and wildlife resources are given equal consideration to other project purposes.
- ◆ Corps/USFWS transfer funding agreement to fund USFWS involvement during the planning process.



Fish & Wildlife Coordination Act - 1958:

- ◆ Document how you address fish and wildlife resources consideration during the study.
- ◆ Attach Fish and Wildlife Coordination Act Report from USFWS/NMFS and state agencies.
- ◆ Evaluate the recommendations of the USFWS/NMFS, and state(s) in the report. Explain rationale for excluding or including any of their recommendations.



National Environmental Policy Act - 1969

Effective 1 January 1970



NEPA: Legal Requirements

- ◆ Identification of significant environmental resources likely to be affected.
- ◆ Assessment of impacts
- ◆ Full disclosure of likely impacts
- ◆ Consideration of full range of alternatives, which must include No Action (future w/o project condition)



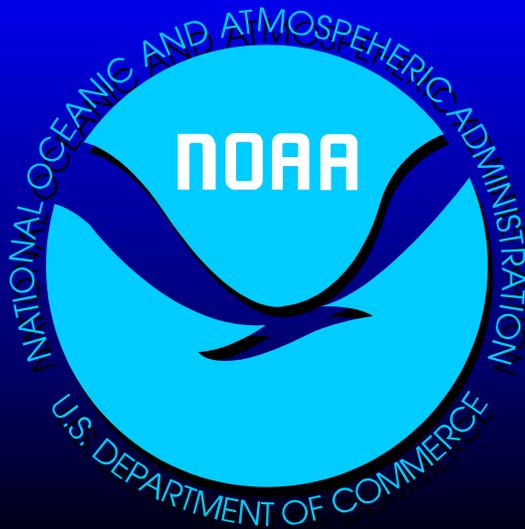
NEPA: More Legal Requirements

- ◆ Consideration of mitigation measures to avoid, minimize, replace or compensate for adverse impacts.
- ◆ See Section 122 of RHA 1970 for list of NEPA items to be addressed by the Corps
- ◆ 40 CFR 1500 - 1508 covers the regulations for Federal agencies on preparation of NEPA documents



Endangered Species Act - 1973:

- ◆ Requires separate coordination from Fish and Wildlife Coordination Act.
- ◆ Protects Federal listed or proposed species and their designated or proposed critical habitat.
- ◆ Section 7 consultation



Endangered Species Act: (cont.'d)

◆ Section 7 Consultation:

- ▼ Request list of species and habitat
- ▼ Corps Biological Assessment identifies any endangered or threatened species which may be impacted by action (180 days)
- ▼ USFWS issues Biological Opinion



Clean Water Act

- ◆ Section 404 - Established permit program for discharge of fill material into the waters of the United States.
- ◆ Section 404(b)(1) - Each disposal site must comply with guidelines established by EPA.



Clean Water Act (cont.'d)

"Waters of the United States" = waters that are, were, or might be used for interstate or foreign commerce; waters subject to ebb and flow of tide; interstate waters; wetlands; all other water whose use, degradation, or destruction could affect interstate or foreign commerce.

(33 CFR part 328)

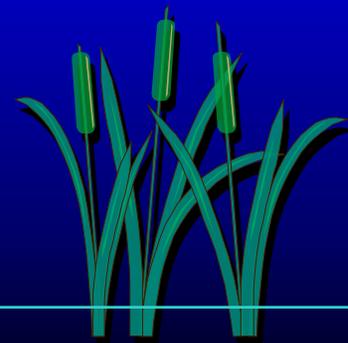


Clean Water Act (cont.'d)

"wetlands"

= those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions

(33 CFR part 328.3(b))



Clean Water Act (cont.'d)

- ◆ **Section 404(r) - Discharge as part of a Federal project specifically authorized by Congress is exempt from provisions of the Section...**

If information on the effects of the discharge, including consideration of the Section 404(b)(1) guidelines is included in the EIS submitted to Congress prior to the discharge in connection with the Congressional action.....

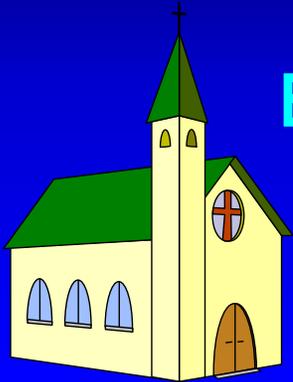


Clean Water Act (cont.'d)

..... Otherwise, a Section 404(b)(1) evaluation must be made, a public notice issued and a Section 401 state water quality certification must be obtained !



National Historic Preservation Act



Established National program for historic preservation.



- ◆ Established National Register of Historic Places and National Historic Landmarks.
- ◆ Identifies Federal responsibilities with regard to historic preservation - cultural & archaeological
- ◆ Established Advisory Council on Historic Preservation
- ◆ State Historic Preservation Office (SHPO) must be consulted

Clean Air Act



- ◆ **Purpose:** Ensure that any Federal activity which may result in the discharge of air pollutants shall comply with Federal, state, interstate, and local air quality control plans
- ◆ **Implementation:** Preparation of impact assessment on air quality by the Corps for FONSI or EIS.

Coastal Zone Management Act



- ◆ **Purpose:** Ensure that any Federal activity within a state's coastal zone is consistent to the maximum extent practicable with the state's CZM plan
- ◆ **Implementation:** Preparation of coastal consistency determination by the Corps and submittal to the state for concurrence.

Marine Protection, Research, and Sanctuary Act



- ◆ EPA: Primary responsibility
- ◆ Regulates disposal of any material in the ocean.
- ◆ Provides for EPA designation of ocean dumping sites.



Executive Order 11990 - Protection of Wetlands



- ◆ Provides leadership in minimizing destruction, loss or degradation of wetlands.
- ◆ Requires Federal agencies to avoid undertaking or assisting in new construction located in wetlands unless there is no practicable alternative.



Environmental Considerations

in the

Project Development Process



Reconnaissance Phase

- ◆ Quick assessment of potential impacts of the proposed project
- ◆ Scope of environmental studies to be conducted during feasibility phase.

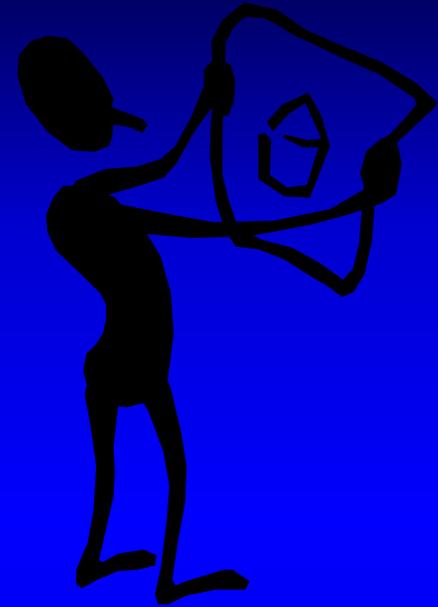


Feasibility Phase

- ◆ Conduct environmental studies/provide formulation input
- ◆ Section 404 Clean Water Act compliance
 - ▼ State water quality certification (if required)
- ◆ Fish and Wildlife Coordination Act Reports
- ◆ Threatened & endangered species coordination
 - ▼ Section 7 Consultation (if required)
- ◆ Cultural & Historical resources assessment
- ◆ HTRW
- ◆ Prepare NEPA documentation (EA-FONSI / EIS-ROD)
- ◆ Compliance with applicable state laws

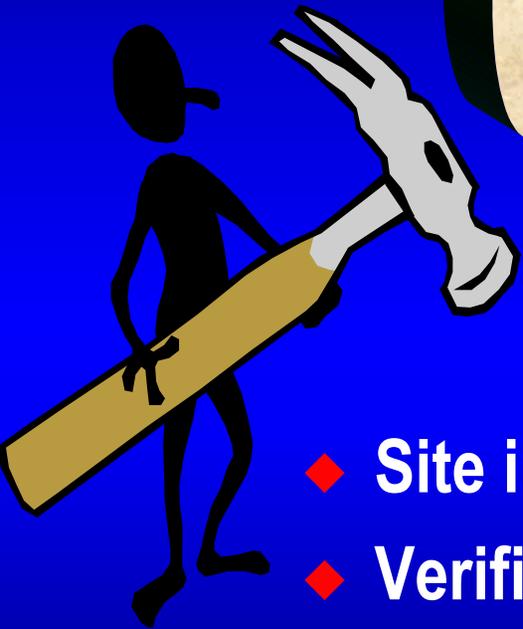


PED Phase



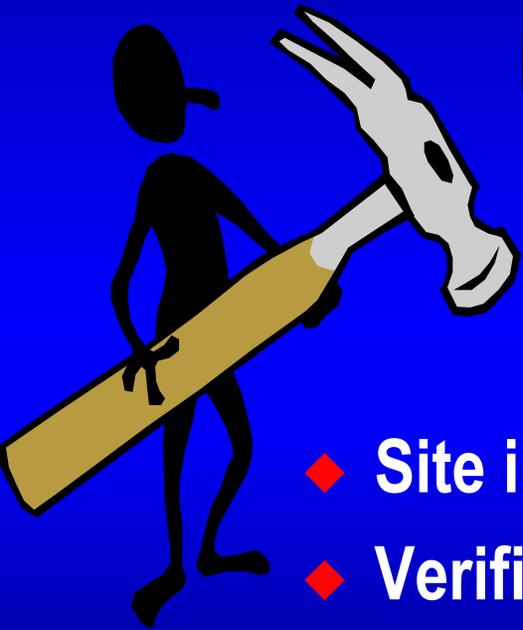
- ◆ Provide input on project plans and specs.
- ◆ Detail how project will be constructed to minimize environmental impacts
- ◆ Identify methods of construction, specification of mitigation measures
- ◆ Verification of compliance with environmental commitments made during feasibility phase

ConstructionPhase



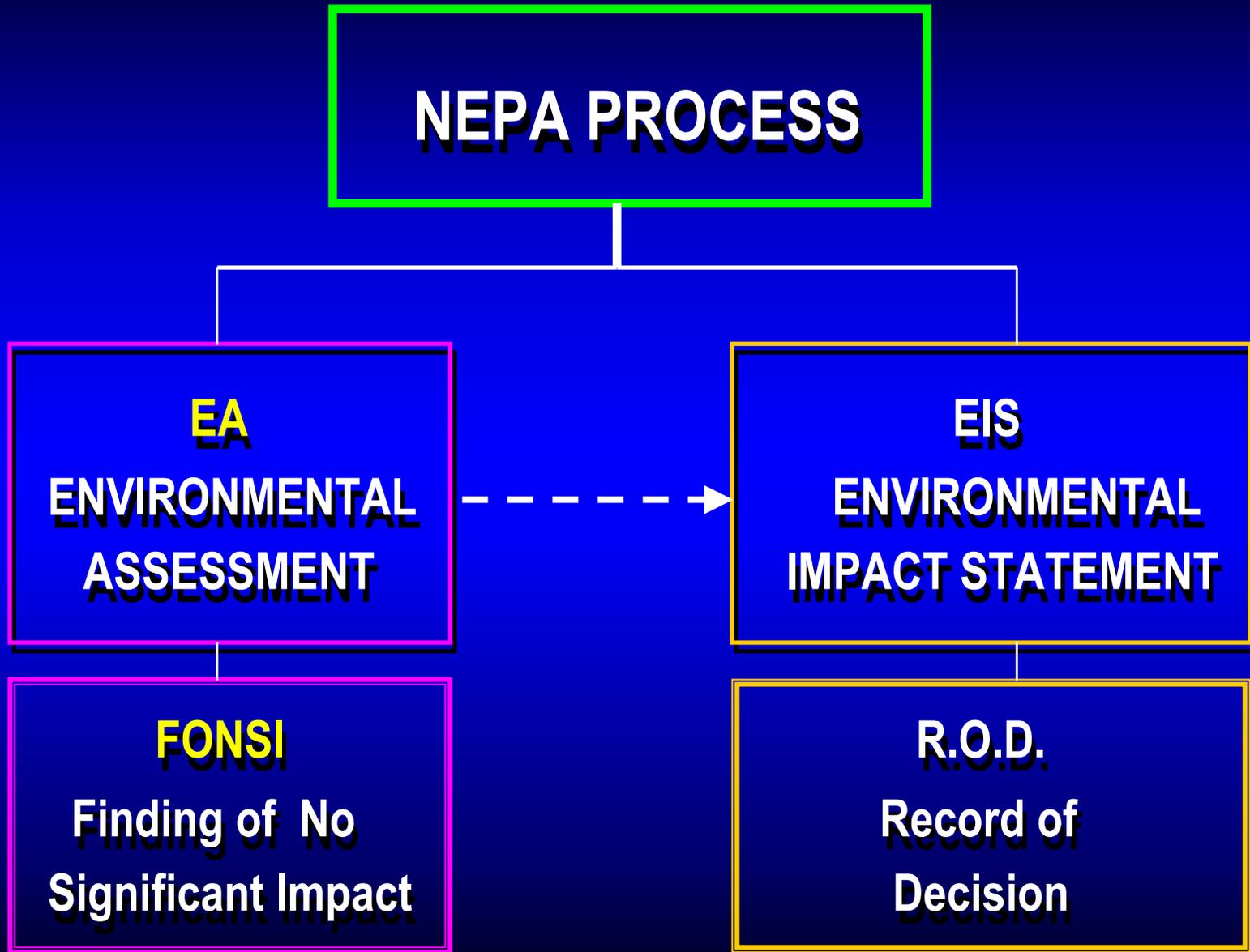
- ◆ Site inspections & monitoring
- ◆ Verification of compliance with environmental commitments made during feasibility/PED phases

OperationsPhase



- ◆ Site inspections & monitoring
- ◆ Verification of compliance with environmental commitments made during feasibility/PED phases

NEPA PROCESS



Environmental Assessment (EA)

- ◆ Completed during the Feasibility Study !
- ◆ EA must provide the following:
 - ▼ Discussion of need for proposed project
 - ▼ Description of environmental impacts
 - ▼ Determination of impact significance
 - ▼ Agency coordination listing
- ◆ Results in a FONSI (Finding of No Significant Impact signed by the District Commander)
or an EIS

Environmental Impact Statement (EIS)

- ◆ EIS prepared when the proposed action is expected to have **SIGNIFICANT** effect on the quality of human environment
- ◆ EIS completed during feasibility, environmental impacts addressed as an integral part of plan formulation and alternative evaluation.
- ◆ Required format, mandatory public meetings (including public scoping meeting), required public review and comment periods (see 40 CFR 1500 - 1508)

Environmental Impact Statement (EIS)

- ◆ EIS requires publication of Notice of Intent (NOI) in the Federal Register
- ◆ EIS requires preparation of a Record of Decision (ROD) signed by ASA(CW) or DCG-CW

Environmental Impact Statement (EIS)

- ◆ **EIS content includes:**
- ◆ **Statement of purpose/need for project**
- ◆ **Description of proposed action and alternatives considered**
 - ▼ “no action” plan
 - ▼ “all reasonable alternatives”
- ◆ **Description of affected environment**
- ◆ **Description of environmental consequences and effects**
- ◆ **Mitigation needs**
- ◆ **Identifies “preferred alternative”**
- ◆ **Final EIS includes and addresses all comments received during review of DEIS.**
- ◆ **List of principle preparers (names, offices, etc)**

SUMMARY COMMENTS:

- ◆ Coordinate EARLY, OFTEN, & CONTINUOUSLY!
- ◆ Environmental considerations are an integral part of plan formulation and evaluation process.
- ◆ Assess impacts of proposed project
- ◆ Meet requirements of all applicable laws (check the Environmental Desk Reference)
- ◆ Avoid, minimize, compensate (= mitigate!)
- ◆ NEPA Compliance
 - ▼ EA/FONSI
 - ▼ EIS/ROD



QUESTIONS P P

